

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 22-cv-24000-BECERRA/TORRES

ROTHFOS CORPORATION,
a New York Corporation,

Plaintiff,

v.

H&H COFFEE INVESTMENTS, LLC,
a Florida Limited Liability Company,
H&H COFFEE GROUP EXPORT CORP.,
a Florida Corporation, CACHITA
LATINA RADIO CORP., a Florida
Corporation, CACHITA UNIVERSAL
STUDIOS INC., a Florida Corporation,
ENTV USA CR PUBLISHING CORP., a
Florida Corporation, and ENTV USA
INC., a Florida Corporation,

Defendants.

**PLAINTIFF'S NOTICE IN RESPONSE TO THE COURT'S
SUA SPONTE ORDER FOLLOWING SUMMARY JUDGMENT HEARING**

On Friday, November 22, 2024, the Court issued a *sua sponte* Order stating that, “[b]y no later than November 26, 2024 at 5:00 p.m., Plaintiff shall file a notice with the Court setting forth the record citations that correspond to the purchase orders which comprise the \$11,975,000.00 in unfulfilled advances for the 2021-2022 coffee season that Plaintiff claims are recoverable in this case.” [ECF No. 197]. Plaintiff Rothfos Corporation’s response to the Court’s Order is set forth herein.

A. The Purchase Orders Comprising \$11,975,000 in Unfulfilled Advances

As is reflected on the face of the purchase orders, thirty-nine of the forty-nine purchase orders at issue in this litigation were issued by Rothfos Corporation (“Rothfos”) to CLR Roasters LLC (“CLR”) during the 2021-2022 coffee season. *See* ECF No. 177-6 at ROTHFOS_000011 - ROTHFOS_000049 (the 49 Purchase Orders). Those purchase order numbers are 42888, 42933, 42934, 42935, 42935A, 42936, 42937, 43015 through 43030, 43097, 43098, 43165 through 43174, and 43302 through 43305 (the “2021-2022 Purchase Orders”). *Id.* The Defendants do not dispute these facts. *See* ECF No. 184 ¶¶ 15-16 (Defs’ Resp. to Pl’s 56.1 Stmt.).

CLR admitted in the Deal Point Memo that the value of the unfulfilled 2021-2022 Purchase Orders was \$11,975,000:

To: Tom Minogue, Olaf Syrdahl /Rothfos Corp (“RC”)

From: Dave Briskie/CLR Roasters (“CLR”)

Date: 6/19/2022

RE: Deal Point Memo to outline resolution and restart plan for green coffee business exporting out of Nicaragua

Objective of RC: There are 3 Primary Objectives as follows: 1) to obtain the coffee that it has paid for in Nicaragua during the 2021/2022 crop/season that equates to approximately 137 containers representing approx. \$11,975,000 in coffee value. 2) Receive coffee value of approx. \$6.1 million for coffee deposits put up for 2019/2020 crop season. Total cash that is invested in the program equals approx..\$18 million. 3) Export coffee out of Nicaragua utilizing Letters of Credit whereby there is minimal financial risk or in country risk in the receipt of coffee.

ECF No. 177-11, at ROTHFOS_000346.

It is undisputed that no additional coffee was delivered to Rothfos after the date of the June 19, 2022 Deal Point Memo excerpted above. *See* ECF No. 184 ¶ 43 (Defs' Resp. to Pl's 56.1 Stmt.).

In a deposition, Rothfos confirmed the accuracy of CLR's estimate:

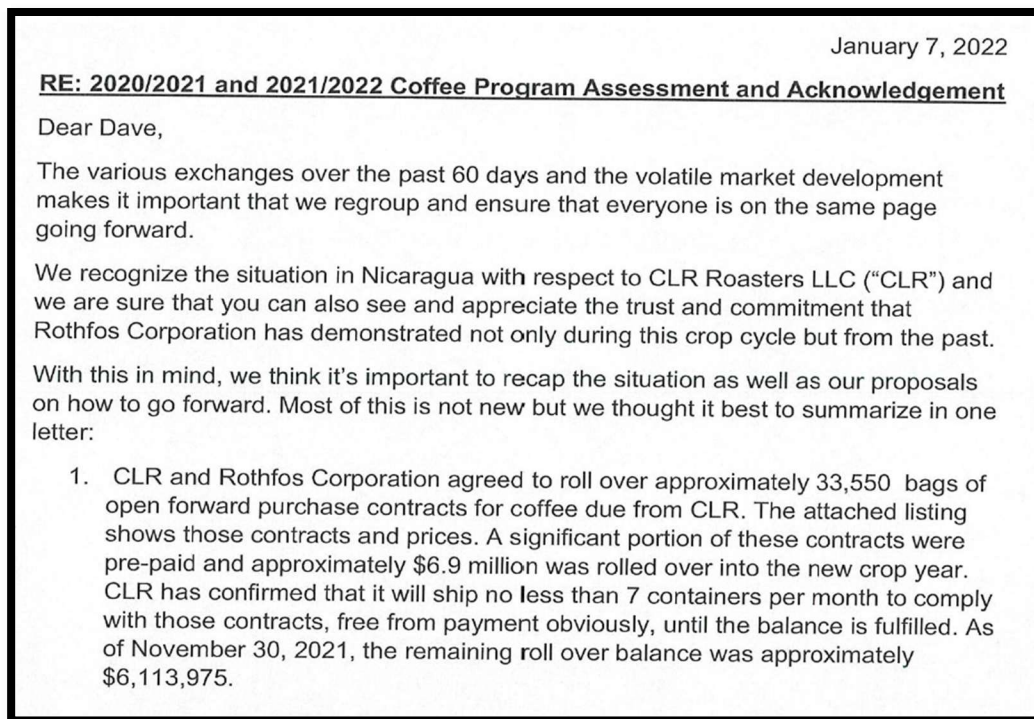
12	Q. All right. Go ahead and read that
13	paragraph for me, please.
14	A. Sure. Objective of RC, Ro Corp. There are
15	three primary objectives as follows: One, to obtain
16	the coffee that it has paid for in Nicaragua during
17	the '21-'22 crop season that equates to
18	approximately 137 containers representing
19	approximately \$11,975,000 in coffee value.
20	Two, receive coffee value of approximately
21	6.1 million for coffee deposits put up for 2019-2020
22	crop season. Total cash that is invested in the
23	program equals approximately \$18 million.
24	Three, export coffee out of Nicaragua
25	utilizing letters of credit whereby there is minimal
1	financial risk or in country risk in the receipt of
2	coffee.
3	Q. Okay. These first two points, are those
4	accurate representations of CLR's obligations to
5	Rothfos as of June 19th, 2022?
6	A. I believe so. I didn't double-check his
7	memo, but I believe so.

ECF No. 177-1, at 195:12-196:7 (Rothfos Dep.).

B. The Purchase Orders Worth \$6,113,975 that Were “Rolled” from Prior Seasons

By contrast, ten of the forty-nine purchase orders – purchase order numbers 38905, 38906, 38907, 39783, 40181, 40866, 40879, 41455, 41456, and 42950 – were issued by Rothfos to CLR in 2019 or 2020, as if reflected on the face of the purchase orders.¹ See ECF No. 177-6, at ROTHFOS_00001 - ROTHFOS_000010 (the 49 Purchase Orders). The Defendants do not dispute this fact. See ECF No. 184 ¶¶ 15-16 (Defs’ Resp. to Pl’s 56.1 Stmt.).

In the Workout Agreement between Rothfos and CLR Rothfos, CLR agreed to “roll over” those purchase orders – i.e., purchase order numbers 38905, 38906, 38907, 39783, 40181, 40866, 40879, 41455, 41456, and 42950 (the “Rolled Purchase Orders”) – into the 2021-2022 coffee season:



¹ For the avoidance of doubt and to supply the relevant background, Plaintiffs have also provided record citations to the ten “rolled over” purchase orders so that they can be easily distinguished from the 2021-2022 Purchase Orders.

ECF No. 177-8, at ROTHFOS_000302.

SCHEDULE																	
PO #	DATE	TRADER	VENDOR	TYPE	ORIGIN	SHIP PER	DEL OR SHIP	PERIOD	BASIS	BAGS	BAGS SIZE	PORT	PSS REQUIRED	FINAL PRICE	MKT BASIS	EXCH	CONT DIFF
38905	22-Feb-19	HR	CLR ROASTERS LLC	NICNSL	NIC	Oct-19	D	3	EXWH	825	69KG	NY	VROTH	0.8922	2009	CSCE	-0.288
38906	22-Feb-19	HR	CLR ROASTERS LLC	NICNSL	NIC	Nov-19	D	3	EXWH	2,750	69KG	NY	VROTH	0.9145	2012	CSCE	-0.288
38907	22-Feb-19	HR	CLR ROASTERS LLC	NICNSL	NIC	Dec-19	D	3	EXWH	2,750	69KG	NJ	VROTH	0.921	2012	CSCE	-0.288
39783	12-Nov-19	HR	CLR ROASTERS LLC	NICNSL	NIC	Jan-20	D	3	EXWH	550	69KG	NY	VROTH	0.6995	2003	CSCE	-0.288
TOTAL BAGS										6,875							
PO #	DATE	TRADER	VENDOR	TYPE	ORIGIN	SHIP PER	DEL OR SHIP	PERIOD	BASIS	BAGS	BAGS SIZE	PORT	PSS REQUIRED	FINAL PRICE	MKT BASIS	EXCH	CONT DIFF
40181.1	31-Jan-20	HR	CLR ROASTERS LLC	NICSHG	NIC	Jul-20	S	3	FCA	1,375	69KG	HOU	VROTH	1.3482	2012	CSCE	0.07
40181	31-Jan-20	HR	CLR ROASTERS LLC	NICSHG	NIC	Jul-20	S	3	FCA	550	69KG	HOU	VROTH	1.3482	2012	CSCE	0.07
40866.4	30-Jul-20	HR	CLR ROASTERS LLC	NICSHG	NIC	Sep-20	S	3	FCA	550	69KG	HOU	VROTH	1.4691	2112	CSCE	0.085
40879	30-Jul-20	HR	CLR ROASTERS LLC	NICSHG	NIC	Oct-20	S	3	FCA	4,125	69KG	NJ	VROTH	1.9875	2112	CSCE	0.085
40879	30-Jul-20	HR	CLR ROASTERS LLC	NICSHG	NIC	Oct-20	S	3	FCA	4,125	69KG	OPEN	VROTH	1.9875	2112	CSCE	0.085
41455	22-Dec-20	HR	CLR ROASTERS LLC	NICSHG	NIC	Feb-21	S	3	FCA	5,500	69KG	OPEN	VROTH	1.9825	2112	CSCE	0.08
42950	8-Oct-21	HR	CLR ROASTERS LLC	NICSHG	NIC	Oct-21	S	3	FCA	2,200	69KG	OPEN	VROTH	1.6581	2112	CSCE	0.07
41456	22-Dec-20	HR	CLR ROASTERS LLC	NICSHG	NIC	Mar-21	S	3	FCA	8,250	69KG	OPEN	VROTH	2.0486	2112	CSCE	0.08
TOTAL BAGS										26,675							

ECF No. 177-8, at ROTHFOS_000306. The Defendants do not dispute this fact. *See* ECF No. 184 ¶¶ 20-23 (Defs' Resp. to Pl's 56.1 Stmt.).

The value of the unfulfilled Rolled Purchase Orders, as acknowledged by CLR in the Workout Agreement and confirmed by Rothfos, is \$6,113,975:

January 7, 2022

RE: 2020/2021 and 2021/2022 Coffee Program Assessment and Acknowledgement

Dear Dave,

The various exchanges over the past 60 days and the volatile market development makes it important that we regroup and ensure that everyone is on the same page going forward.

We recognize the situation in Nicaragua with respect to CLR Roasters LLC ("CLR") and we are sure that you can also see and appreciate the trust and commitment that Rothfos Corporation has demonstrated not only during this crop cycle but from the past.

With this in mind, we think it's important to recap the situation as well as our proposals on how to go forward. Most of this is not new but we thought it best to summarize in one letter:

1. CLR and Rothfos Corporation agreed to roll over approximately 33,550 bags of open forward purchase contracts for coffee due from CLR. The attached listing shows those contracts and prices. A significant portion of these contracts were pre-paid and approximately \$6.9 million was rolled over into the new crop year. CLR has confirmed that it will ship no less than 7 containers per month to comply with those contracts, free from payment obviously, until the balance is fulfilled. As of November 30, 2021, the remaining roll over balance was approximately \$6,113,975.

ECF No. 177-8, at ROTHFOS_000302 and ROTHFOS_000306 (the Workout Agreement); *see also* ECF No. 177-1, at 195:12-196:7 (Rothfos Dep.). The Defendants do not dispute this fact. *See* ECF No. 184 ¶¶ 37-39 (Defs' Resp. to Pl's 56.1 Stmt.).

Date: November 25, 2024

Respectfully submitted,

By: /s/ Jason P. Hernandez
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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 25, 2024, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. Copies of the foregoing document will be served on all parties via transmission of Notice of Electronic Filing generated by CM/ECF.

/s/ Jason P. Hernandez
JASON P. HERNANDEZ